

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3383 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KALUPUR COMM. CO.OP. BANK LTD.

Versus

SYNDICATE BANK

Appearance:

MR VC DESAI for Petitioner

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 30/01/97

C.A.V.JUDGEMENT

This petition is filed by original defendant no.1 in Civil Suit No.1349 of 1993 which is at present pending before Debts Recovery Tribunal, Ahmedabad, to challenge

the order passed by the said Tribunal on 13th March 1996.

2 Respondent no.1-Syndicate Bank has filed Civil Suit No.1349 of 1993 against the present petitioner and respondent no.2-M/s Ram Enterprise for getting a decree for Rs.17,50,771 by alleging that the present petitioner had presented a draft bearing no.219119/113 dated 6th October 1990 for Rs.9,82,000 and collected the money from the plaintiff and that the said draft was a forged and fabricated document. Respondent no.1 therefore sought a decree for the said amount of Rs.9,82,000 and the future interest thereon against the present petitioner and respondent no.2 herein.

3 The said suit was filed in the City Civil Court at Ahmedabad but, after the establishment of the Debts Recovery Tribunal under section 3 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the said suit has been transferred to the said Tribunal. The petitioner had filed the application before the said Tribunal contending that in view of the averments made in the plaint the Tribunal had no jurisdiction to entertain the said proceeding and that the proceeding i.e. Civil Suit No.1349 of 1993 be transferred back to the City Civil Court at Ahmedabad. The learned Tribunal has rejected the said application by passing a detailed reasoned order and hence the petitioner has come before this Court.

4 It is an admitted fact that the suit was filed by a bank and the said bank is covered by the provisions of the said Act of 1993. Section 2(g) of the said Act of 1993 gives a definition of 'debt' and the said definition runs as under:

"(g) "debt" means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any civil court or otherwise and subsisting on, and legally recoverable on, the date of the application;"

5 If the above definition of debt is taken into consideration carefully, it will be quite clear that any liability which is alleged as due from any person to a

bank whether secured or unsecured or whether payable under a decree or an order of any civil court or otherwise is a debt under the said Act. Section 31 of the said Act 1993 makes it clear that every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under the said Act shall stand transferred on the date such Tribunal is established. If the said provision of section 31 is considered, it would be clear that it provides that the provision of sub-section 1 of section 31 shall not apply to an appeal pending on the date the Tribunal is established. It is very pertinent to note that section 31 nor any other specific section provides specifically as to what proceedings are to be transferred. Section 17 of the said Act of 1993 provides that the Tribunal shall have the jurisdiction to entertain and decide the claims of recovery of debt to banks and financial institutions.

6 The learned advocate for the petitioner urged before me that the plaintiff-bank is alleging that the draft is a fraudulent document and fraud is played against the bank. Such questions of fraud and fraudulent document must be decided by a Civil Court and the Tribunal would not be in a position to decide them. But there is no provision of law to the effect that the question of fraud is to be decided by only Regular Civil Court. Similarly, no provision of any law bars the jurisdiction of the Tribunal established under the said Act of 1993 to decide such question. If the argument of the learned counsel is to be accepted then no suit of a bank could be transferred or entertained by the said Tribunal. Because the usual contention raised by a defendant in a suit brought by a bank is that all the documents produced by bank are fraudulent and his/their signatures are obtained by either fraud or misrepresentation or coercion. I am therefore unable to accept the said submission.

7 It is the claim of respondent no.1 that it is entitled to recover the amount paid by respondent no.1 to the present petitioner on behalf of respondent no.2 on account of presentation of a draft which is said to be a forged and fabricated draft. Therefore, it is obvious that the claim of respondent no.1 is against the present petitioner as well as respondent no.2 that they are liable to pay to the petitioner the amount which they received on account of the presentation of a forged and fabricated bank draft. So it is a claim for an unsecured amount. Therefore, the claim of respondent no.1 could not be said to be not amounting to a 'debt', as defined under section 2(g) of the said Act, 1993. Therefore, in

these circumstances the view taken by the said Tribunal in rejecting the application of the present petitioner could not be said to be illegal or improper so as to interfere with the same by exercising the discretionary powers under Article 226 as well as 227 of the Constitution of India.

I thus hold that there is no substance in this petition and the same deserves to be summarily rejected. I therefore dismiss this petition in limine with no orders as to costs.

(mohd)